

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**



United States Courts  
Southern District of Texas  
FILED

October 11, 2018

David J. Bradley, Clerk of Court

No. 17-41252  
1:15-cv-144

A True Copy  
Certified order issued Oct 11, 2018

JESUS CERVANDO LOPEZ,

*Jyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

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Appeal from the United States District Court  
for the Southern District of Texas

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O R D E R:

Jesus Cervando Lopez, Texas prisoner # 1784120, appeals the district court's denial of his Federal Rule of Civil Procedure 60(b)(6) motion as an unauthorized second or successive 28 U.S.C. § 2254 application in part and as moot in part. Counsel appointed to represent Lopez on appeal filed a motion for leave to withdraw and a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). See *Dinkins v. Alabama*, 526 F.2d 1268, 1269 (5th Cir. 1976). Lopez has filed a response, in which he argues that he received ineffective assistance of habeas counsel in the district court.

Lopez is required to obtain a certificate of appealability (COA) to appeal the denial of his Rule 60 motion. See *Cardenas v. Thaler*, 651 F.3d 442, 443 (5th Cir. 2011); *Ochoa Canales v. Quartermann*, 507 F.3d 884, 888 (5th Cir.

2007). His notice of appeal is construed as a request for a COA. *See* FED. R. APP. P. 22(b). A COA may be issued only if Lopez makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

A review of counsel’s *Anders* brief and the relevant portions of the record reveal no nonfrivolous issue for appellate review. *See United States v. Flores*, 632 F.3d 229, 232–34 (5th Cir. 2011). Further, “ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief” in a § 2254 proceeding. 28 U.S.C. § 2254(i). Accordingly, counsel’s motion for leave to withdraw is GRANTED, and counsel is excused from further responsibilities herein. The request for a COA is DENIED.

/s/ Stephen A. Higginson

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STEPHEN A. HIGGINSON  
UNITED STATES CIRCUIT JUDGE

***United States Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

October 11, 2018

Mr. David J. Bradley  
Southern District of Texas, Brownsville  
United States District Court  
600 E. Harrison Street  
Room 1158  
Brownsville, TX 78520

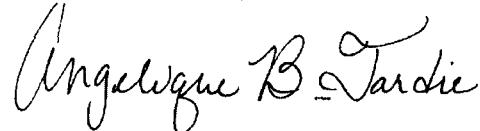
No. 17-41252      Jesus Lopez v. Lorie Davis, Director  
USDC No. 1:15-CV-144

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:  
Angelique B. Tardie, Deputy Clerk  
504-310-7715

cc w/encl:

Mr. Jesus Cervando Lopez  
Ms. Jessica Michelle Manojlovich  
Mr. Edward Larry Marshall  
Mr. Gregory Don Sherwood